

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

TRAXXAS, LP,

Plaintiff,

V.

**XIN YU ARTS TOYS CO., LTD. d/b/a
XQ TOYS and AUTOTEC SALES,
INC. d/b/a EXTREME MACHINES**

Defendants.

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CIVIL ACTION NO.

JURY TRIAL DEMANDED

NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendants Xin Yu Arts Toys Co, Ltd. d/b/a XQ Toys and AutoTec Sales, Inc. d/b/a Extreme Machines file this Notice of Removal and respectfully show the following:

I. STATE COURT ACTION

The above-styled cause was initially brought in the 101st Judicial District Court of Dallas County, Texas. The state court action is styled: Traxxas, LP v. Xin Yu Arts Toys Co, Ltd. d/b/a XQ Toys and AutoTec Sales, Inc. d/b/a Extreme Machines, Cause No. DC-10-13615 In the 101st Judicial District Court of Dallas County, Texas.

II. PARTIES

Plaintiff Traxxas, L.P. is on information and belief, a citizen of the State of Texas, having been incorporated under the laws of the State of Texas and having its principal place of business in the State of Texas.

Defendant Xin Yu Arts Toys Co, Ltd. d/b/a XQ Toys is a foreign entity and is a

citizen of Shantou City, Guangdong Province, China, and having its principal place of business having been incorporated under the laws of the Shantou City, Guangdong Province, China and having its principal place of business in Shantou City, Guangdong Province, China. Defendant AutoTec Sales, Inc. (erroneously named d/b/a Extreme Machines) is a citizen of the State of California having been incorporated under the laws of California and having its principal place of business in the State of California.

III. JURISDICTION

This Court has jurisdiction over the subject matter of this cause, pursuant to 28 U.S.C.A. § 1331, because this is a civil action arising under the Constitution, laws, or treaties of the United States. *See* 28 U.S.C.A. § 1331. More specifically,

This is an action for trademark infringement and trademark counterfeiting, under 15 U.S.C. § 1114, trade dress infringement under 15 U.S.C. § 1125(a), under the Trademark Act of 1946, as amended, 15 U.S.C. §1051 *et seq.* (“Lanham Act”), and breach of contract under state and common law.

This Court has jurisdiction over the subject matter of this action under 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, and 1338, and has supplemental jurisdiction for the state law claims.

Accordingly, this cause is removable pursuant to 28 U.S.C.A. §§ 1441 & 1446. Moreover, this Court has supplemental jurisdiction over any claim(s) of unfair competition that are substantially related to Plaintiff’s patent, copyright, and/or trademark claim(s). *See* 28 U.S.C.A. § 1338(b). This Court also has supplemental jurisdiction, pursuant to 28 U.S.C.A. § 1367, over any other claim(s) that form part of the same case or controversy as Plaintiff’s claim(s) under federal antitrust and/or unfair competition law.

law. *See* 28 U.S.C.A. § 1367(a).

IV. TIMELINESS

Defendants Xin Yu Arts Toys Co, Ltd. d/b/a XQ Toys and AutoTec Sales, Inc. d/b/a Extreme Machines (“Defendants”) have not been served with process of Plaintiffs' Original Petition; however, Plaintiffs filed Plaintiff’s Original Petition and application for temporary restraining order on October 13, 2010 and a hearing on Plaintiff’s application for temporary restraining order was held on October 14, 2010. Therefore, thirty days have not elapsed since Defendants were not formally served with process and a hearing on Plaintiff’s application for temporary restraining order was not held until October 14, 2010. Pursuant to 28 U.S.C.A. § 1446, this Notice of Removal is timely and proper.

V. CONDITIONS PRECEDENT

Defendant has tendered the filing fee of \$350.00 to the Clerk of the United States District Court for the Northern District of Texas Dallas Division along with the original Notice of Removal. A copy of this Notice of Removal is also being filed in the 101st Judicial District Court of Dallas County, Texas, and all counsel of record are being provided with complete copies.

Accordingly, Defendant respectfully requests that the above action, now pending in the 101st Judicial District Court of Dallas County, Texas, styled: Traxxas, LP v. Xin Yu Arts Toys Co, Ltd. d/b/a XQ Toys and AutoTec Sales, Inc. d/b/a Extreme Machines, Cause No. DC-10-13615 In the 101st Judicial District Court of Dallas County, Texas. be removed therefrom to this Court.

Respectfully submitted,

**LAW OFFICE OF WENDY B.
MILLS**

By: s/ Wendy B. Mills
Wendy B. Mills,
Texas Bar No. 24032861
100 Crescent Court, Suite 700
Dallas, TX 75201
Telephone: (214) 236-5349
Facsimile: (214) 764-7600
Email: wbm@wbmillslaw.com
Attorney for Defendants

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this Notice of Removal has been forwarded to all counsel of record by facsimile and electronic mail on this 2nd day of November 2010.

s/ Wendy B. Mills

Wendy B. Mills